Before the
**FEDERAL COMMUNICATIONS COMMISSION**
Washington, D.C. 20554

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| In the Matter of | ) | |
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| Telecommunications Relay Services And Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities | ) | Docket 03-123 |

To: Chief, Consumer and Governmental Affairs Bureau

***REPLY COMMENTS IN RESPONSE TO SPEED OF ANSWER INQUIRY***

Hands On Video Relay Services, Inc. ("Hands On"), by its counsel, submits this reply to the comments submitted by various parties to the Bureau's request for further comment on the speed of answer requirement for Video Relay Service ("VRS"), DA 05-339 (February 8, 2005). In support, the following is shown.

The issue of the appropriate answer speed for Video Relay Service essentially pits Sorenson Media, Inc., the dominant VRS provider,[1] against the rest of the VRS industry and the major consumer organizations. Sorenson, which it is widely known has such long answer times that it has taken to having its video interpreters call back VRS users who get tired of waiting to make a call, lo and behold does not want any

[1]Contrary to its suggestion that VRS consumers freely choose to wait many minutes to use its service, Sorenson maintains its market dominance not by superior service but by giving away set top video phone devices which block consumer access to other VRS providers, its so-called VP-100 device. The VP-100 is actually a slightly modified device manufactured by Dlink, and called an Eye2i video phone. One of the modifications Sorenson made to the device was to block the IP Addresses of its VRS competitors. Sorenson originally designed the chipset in the Dlink device. A second way Sorenson maintains its market dominance is through limiting access to its LDAP server, which allows VP-100 users to contact other deaf and hard of hearing persons through an ersatz telephone number, rather than by using an IP Address. Sorenson could easily make this service available to others, including Dlink users accessing other VRS providers, since every Dlink video call goes through a Sorenson server.

mandated answer speed. Consumers represented by the National Video Relay Service Coalition, an ad hoc group that includes the following organizations: Telecommunications for the Deaf, Inc. ("TDI"), Deaf and Hard of Hearing Consumer Advocacy Network ("DHHCAN"), National Association of the Deaf ("NAD"), The Association for Late Deafened Adults ("ALDA"), the American Association of People with Disabilities ("AAPD"), Deaf and Hard of Hearing in Government ("DHHIG"), the California Coalition of Agencies Serving the Deaf and Hard of Hearing ("CCASDHH"), the Student Body Government of Gallaudet University ("SBG"), and the Registry of Interpreters for the Deaf, Inc. ("RID") wants the Commission to establish an immediate answer speed equal to the functionally equivalent TRS answer speed requirement of 85 percent of calls answered within 10 seconds.[2] Most other commenters, e.g., AT&T, Communications Services for the Deaf, Inc., and Registry of Interpreters for the Deaf have taken a middle ground suggesting that the answer speed must be phased-in over a certain period of time in order to allow providers to adequately staff to meet a VRS answer speed. Hands On falls within that middle ground, suggesting that the Commission should adopt an answer

[2]The Coalition would make this answer speed requirement effective 60-120 days after the FCC's decision is published in the Federal Register. Since there is in fact an answer speed requirement for VRS of 85/10 now in existence, but temporarily waived, we suggest Federal Register publication likely would not be necessary if the FCC adopted the Coalition's recommendations, since no rule would be created or modified.

speed requirement for VRS which would require that 85 percent of calls be answered within 30 seconds.[3]

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[3]There appears to be a directed campaign by persons unknown suggesting that the Commission should mandate that only RID interpreters should be allowed to serve as VRS interpreters. This is a bit perplexing since RID does not even take that position. *See* RID Comments at page 3. *See also* Emerging Video Interpreter and Video Relay; Standards and Regulations (Draft) *at* http://www.rid.org/spp.html. RID's actual position is that video interpreters should hold a national certification, including

the RID certifications or a valid NAD certification. *See* RID comments at 3. Hands On does understand that RID and NAD are combining their certification programs. For the Commission's information, Hands On does require of its interpreters a national certification. Hands On would have no intention of relaxing that requirement when the Commission adopts a VRS answer speed, or terminates the existing answer speed. waiver for VRS. Hands On opposes any requirement that video interpreters possess any particular certification. Hands On does not oppose a requirement that interpreters possess any particular certification as long as it is a national certification.

Sorenson opposes elimination of the waiver for a minimum answer speed criterion for VRS. Sorenson Comments at 1-6. Sorenson bases its opposition to a minimum answer speed requirement on the impracticality of meeting the requirement without compromising the quality of VRS. In addition Sorenson suggests that the cost of VRS will rise if the Commission adopts an answer speed requirement. The Commission should reject Sorenson's position.

First, although waiver requests of Commission rules must be given a hard look, the burden is on Sorenson to justify continuation of the waiver. Sorenson has offered no compelling evidence to justify continuation of the speed of answer waiver. Indeed, Sorenson offers no evidence other than generalized argument. That generalized argument is that if the waiver is ended, VRS quality will drop, either because VRS providers will have to cut back hours or hire low quality interpreters. Sorenson presents no facts to support these arguments. Indeed the few facts Sorenson presents, supports the conclusion that a sufficient number of interpreters exist to handle VRS traffic.

Sorenson suggests that the VRS market is competitive and that consumers should have a choice between long wait times with what it alleges is quality service, and shorter wait times with lower quality service. Sorenson's suggestion and the logic behind it is fallacious and disingenuous.

In reality, Sorenson's opposition appears to be an attempt to maximize its profits at the peril of VRS consumers. Sorenson uses its artificial market dominance to impose long waits on VRS consumers in order to maximize profits. The long wait times

maximize profits by eliminating interpreter down-time and thus holding down interpreter costs.

Sorenson's practices increase the barriers for the deaf, hard of hearing and hearing users of VRS. Although there are certainly anti-competitive and antitrust issues with these restrictions that the Commission and the courts should address, what they mean in the context of the speed of answer waiver, is that Sorenson users do not in the short run have the ability to use another VRS provider if Sorenson's service is inadequate. The user would have to terminate his relationship with Sorenson, turn in his VP-100, obtain a video phone on the open market or from one of Sorenson's competitors, or purchase a computer system for VRS use before he could use another VRS service provider.

Sorenson advises this Commission that it should value access over functional equivalence. If that is Sorenson's true position, it should stop blocking its users from accessing competing VRS providers. This is not just a competitive beef; it is a matter of safety of life and property. Indeed, many deaf and hard of hearing persons have abandoned their TTYs and replaced them with videophones, in most cases with the VP-100s, under the dangerous illusion that VRS will give them immediate access to the public phone system for emergency calls, One day someone will die trying to place an emergency call while waiting 20 minutes to get a Sorenson interpreter. This is a key point on why the speed of answer waiver is contrary to the public interest. It deprives deaf and hard of hearing persons with the immediate lifeline that hearing persons have via the public telephone network. Although Sorenson does not publicly report its

average answer speed, anecdotal evidence suggests that Sorenson customers must wait several minutes to be connected with a video interpreter. In fact, we have heard instances of waits as long as 20 to 30 minutes, and even longer.

In light of these facts, the Commission should take Sorenson's suggestion that competition will ensure adequate provider answer speeds with a grain of salt. Clearly, Sorenson simply would rather force VRS users to wait for an interpreter, rather than forego the profits it makes by employing fewer interpreters than necessary to reduce waiting time.

Sorenson's assertion that there are not enough qualified interpreters available to handle all the traffic at an acceptable answer speed is not only unsupported, it is simply wrong. Sorenson notes that RID's website shows that its membership of certified interpreters is 5,464.[4] Sorenson previously told this Commission that there are only 4,900 certified ASL interpreters, nationwide. *See* Sorenson Opposition to Petitions for Reconsideration (November 15, 2004). What Sorenson does not disclose, however, is that in addition to the 5,464 RID certified interpreters, RID lists some

[4] This is drawn from it on line database of interpreters. *See* http://filemaker.rid.org/FMPro?-db=wmember.fp3&-lay=web&-format=search_mbr.htm&-view. RID also reported that its membership as of July 2003 was 4,424 certified interpreters, 3,501 non-certified interpreters and 1,235 students studying interpreting at least part time. *See* http://www.rid.org/faq.html. Based on the growth of RID's membership it would appear that the number of interpreters is growning at a rate in excess of 10 percent per year.

3,217 non-certified associate member interpreters.[5] Of those, 1,705 state they are free-lance interpreters. Presumably the bulk of the other 1,512 are employed full or part time. Many of these associate members have state interpreter certifications. Moreover, Sorenson totally fails to discuss the number of NAD certified interpreters. Thus, Sorenson has vastly understated the available pool of sign language interpreters.[6] It is also worth noting that the number of RID certified and non-certified

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[5] An associate member is defined as a person engaged in sign language interpreting who does not possess an RID or NAD certification. *See* http://www.rid.org/memapp.pdf.

[6] In fact, the Bureau of Labor Statistics reports that "interpreters and translators held about 24,000 jobs in 2002. Because of the large number of people who work in the occupation sporadically, however, the actual number of interpreters and translators is probably significantly higher. Many who freelance in the occupation work only part time, relying on other sources of income to supplement earnings from interpreting or translation." *See* http://bls.gov/oco/ocos175.htm. Although this number includes foreign language interpreters as well, it serves to illustrate that there is a large pool of interpreters, including sign language interpreters, who are underemployed and who thus are

interpreters has increased approximately five percent in just the last four months. *See* Reply to Opposition to Petition for Reconsideration (November 29, 2004). Thus as the demand for interpreters increases it appears that more persons are in fact going into the profession and are available to serve as video interpreters.

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available to handle increased demand for ASL interpreting.

Sorenson also does not discuss the number of interpreters needed to provide VRS as a reasonable answer speed. In November, Hands On calculated that it requires merely from 414 to 434 interpreters nationwide to handle 1,000,000 minutes of traffic in a 30 day month with an occupancy rate of 43 percent.[7] That was a maximum of approximately 8.9 percent of the 4,900 number Sorenson previously used as an estimate of available interpreters. Because VRS monthly usage has now surpassed 1,000,000 minutes. Accordingly, Hands On recalculated the number of interpreters needed to handle 2,000,000 of VRS billable traffic. As shown in Exhibit 1, it would require approximately 862 video interpreters to handle 2,000,000 minutes of traffic in December of 2005 (a 31 day month) based on the same assumptions Hands On used in its November 29, 2005 filing. That number admittedly does assume that all VRS providers can be considered to constitute one trunk group. Distributing 2,000,000 minutes evenly among the seven VRS providers, and thus seven trunk groups, however, merely increases the required number of interpreters to 875. That is 16

[7] This calculation was based on an average call length of five minutes conversation time, with one and one half minutes combined set-up and wrap up time, 80 percent of calls answered within 30 seconds, and a maximum occupancy percentage of 43 percent in any two hour segment. Answer speeds down to 10 seconds do not increase the number of interpreters required due to the maximum 43 percent utilization level. Twenty-four hour service is also assumed. Call distribution data on an hourly and daily basis is based on past Hands On operational data, except for late night hours in which Hands On currently does not operate. For those hours, data was interpolated from actual operational data. The actual calculations will be made available upon request to the Commission, subject to a request for confidential treatment. It should be noted that were the maximum occupancy allowed to increase above the 43 percent level, the required number of interpreters would decrease proportionately. However, the 43 percent figure was chosen as a safeguard to limit the potential for repetitive stress injuries and interpreter fatigue.

percent of RID certified interpreters and 10 percent of the total of RID certified interpreters and RID's associate member interpreters.

Hands On does agree that Sorenson makes a good point concerning exhaustion of available interpreters in communities where more than one call center is located. It appears, however, that Sorenson has chosen as a corporate policy to locate call centers in cities with existing VRS call centers, therefore, contributing to the interpreter shortage it decries. That actually, as we understand it, is the complaint CSD had with Sorenson. *See* Sorenson Comments at 3. For example, Sorenson has opened call centers in Austin, Texas and Minneapolis, MN where CSD has existing VRS call centers, and in the San Francisco Bay area where Hands On recently opened a call center. Thus, perhaps Sorenson should reexamine its own corporate policies.[8]

Hands On has not found a lack of interpreters as the chief cause for inadequate answer speeds. The interpreters are available as evidenced by the more than 1,200 students currently studying to become sign language interpreters. However, the funds need to be available to pay these interpreters. Indeed, Hands On lost several interpreters following the Bureau's slashing of the 2003-04 VRS rate. That rate reduction caused a decided drop in morale among interpreters who now are distrustful of compensation levels, job security and the industries commitment to safe working conditions due to a perceived lack of stability in VRS funding. If the Commission wishes to encourage a sufficient supply of interpreters, it should set a reasonable

[8] The purpose of Sorenson's policy appears to be to raid trained interpreters from other VRS providers rather than to recruit and train them itself.

answer speed and acknowledge that utilization levels in excess of 45 percent exceed safe working conditions.

To the extent that an interpreter shortage does develop, and we suggest that is unlikely, the Commission can at that time consider a limited waiver or relaxation of the answer speed requirement and/or encourage Congress to allocate additional funding to train interpreters. Hands On suggests, however, that institution of an answer speed requirement will spur the interpreter training programs in the nation to scale up their training programs to meet the increased demand for sign language interpreters.

In this connection, Hands On also agrees with Sorenson that elimination of the speed of answer waiver will likely require some additional funds to pay the increased number of interpreters needed to support the answer speed requirement. That is not a valid concern to this Commission under Section 225 of the Act, which requires functional equivalent relay service. Moreover, Hands On's calculation indicates that at an appropriate utilization level, i.e., one that does not overwork interpreters (no more than 45 percent), a reasonable answer speed criterion is easily met. *See* note seven supra, and accompanying text. If the Commission sets an appropriately phased-in answer speed requirement, VRS providers will be able to cost adequately to hire and train the necessary sign language interpreters to meet that answer speed requirement, Sorenson included, and there should be no "rate shock" adversely impacting on the Interstate TRS Fund.

Sorenson also argues that if the Commission adopts an answer speed, that additional calls made by a VRS user should count in the reported answer speed. That does not make sense. The answer speed criterium measures how long it takes a provider to get an interpreter to a caller, in other words how long it takes the VRS provider to answer the incoming call. Once the interpreter has connected with the caller, the call has been answered whether the caller makes 1 or 100 VRS calls. Adoption of Sorenson's suggestion would merely serve to mask a provider's real answer speed. It should therefore be rejected.

RID suggests that abandoned calls should not be considered in determining answer speed. That view is misguided. Abandoned calls are directly related to poor speed of answer performance. When a provider has an insufficient number of video interpreters on duty, it results in an increasing speed of answer, and an ever increasing number of persons holding for an interpreter, thus resulting eventually in abandoned calls. *See* http://www.erlang.com/calculatormanual/erlangc.htm#layout. Abandoned calls should be considered in the answer time because in most instances calls are abandoned because callers get tired of waiting. Including abandoned calls thus ensures that the provider's actual performance will be measured by its answer speed.

Respectfully submitted,

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